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BEFORE THE ARIZONA CORPORATIC

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IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, L.L.C., DBA  
JOHNSON UTILITIES FOR AN INCREASE  
IN ITS WATER AND WASTEWATER  
RATES FOR CUSTOMERS WITHIN PINAL  
COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180

RESPONSE BRIEF OF JOHNSON  
UTILITIES TO STAFF'S INITIAL  
CLOSING BRIEF

Johnson Utilities, L.L.C., ("Johnson Utilities" or the "Company") hereby files its Response Brief to the Initial Closing Brief of Utilities Division Staff ("Staff") dated April 18, 2014.

In its Initial Closing Brief, "Staff recommends approval of the income tax recovery level noted in the Settlement Agreement" but "recommends denial of the alternative filing requirement of a rate case noted in the Settlement Agreement."<sup>1</sup> However, such an outcome is impossible based upon the clear language of the Proposed Settlement Agreement ("Settlement Agreement")<sup>2</sup> and the stated positions of Johnson Utilities and the Residential Utility Consumer Office ("RUCO") on the record. Section 4.5 of the Settlement Agreement states:

Each of the terms of this Agreement is in consideration of all other terms of this Agreement. Accordingly, the terms are not severable. (emphasis added)

In addition, Section 3.3 of the Settlement Agreement states:

If the Commission fails to issue an order adopting all material terms of this Agreement, either Signatory may withdraw from this Agreement, and such Signatory may pursue without prejudice its respective remedies at law. For purposes of this Agreement, whether a term is "material" shall be left to the discretion of the Signatory choosing to withdraw from the Agreement. (emphasis added)

<sup>1</sup> Staff's Initial Closing Brief (April 18, 2014) at 2, lines 17-19 (citations omitted).

<sup>2</sup> The Settlement Agreement was admitted at the hearing as Exhibit A-4.

Staff correctly acknowledges in its Initial Closing Brief that neither Johnson Utilities nor RUCO are willing to bifurcate the issues,<sup>3</sup> and thus, concludes as follows:

If the parties are not willing to bifurcate and they have each testified that they are not willing, Staff recommends that the Commission not approve the Settlement Agreement.<sup>4</sup>

Thus, Staff's recommendation, if adopted, will deny wastewater customers of Johnson Utilities the benefit of an annual rate reduction in the collective amount of approximately \$286,000, simply because Staff will not support a one-year extension of the current rate case test year filing requirement in Decision 73992. What makes Staff's position all the more troubling is the fact that Johnson Utilities and the Town of Florence are working to complete the sale and transfer of the Company's utility assets by the end of June 2014.<sup>5</sup> As Staff correctly acknowledges in its Initial Closing Brief, "[e]ither [test year] filing requirement becomes moot if the Town of Florence purchases Johnson Utilities."<sup>6</sup>

Staff asserts that the "Commission has indicated that it would prefer to see utilities file rate applications timelier, [rather] than waiting a long time between rate cases."<sup>7</sup> Staff offers, as an example, Decision 73254 in the case of Great Prairie Oasis L.L.C. doing business as Sunland Water Company ("Sunland"). However, the facts of the Sunland case are very different from the facts pertaining to Johnson Utilities. In 2012, Sunland filed an application requesting approval of a \$125,000 loan from the Water Infrastructure Finance Authority of Arizona and an application requesting rates and charges based upon a 2011 test year.<sup>8</sup> The initial rates for Sunland were established in 1969,<sup>9</sup> so the initial rates were in effect for 43 years before the first rate case was filed, and for 12 years after service was first provided to a customer.<sup>10</sup> In approving a sizeable rate increase for Sunland, the Commission explained as follows:

<sup>3</sup> Staff's Initial Closing Brief (April 18, 2014) at 4, lines 2-8.

<sup>4</sup> *Id.* at 4, lines 10-11 (citations omitted) (emphasis added).

<sup>5</sup> The asset sale and purchase are being addressed in Docket WS-02987A-13-0477.

<sup>6</sup> Staff's Initial Closing Brief (April 18, 2014) at 3, lines 18-19.

<sup>7</sup> *Id.* at 3, lines 15-16.

<sup>8</sup> Decision 73254 at 1, lines 15-22.

<sup>9</sup> *Id.*

<sup>10</sup> According to Sunland, the first water utility customer was served in 2000.

1 We desire to ensure that Sunland does not again allow an excessive period of time  
2 to pass before coming in for another rate case. Thus, we will require Sunland to  
3 file its next general rate case application within three years after the effective date  
of this Decision.<sup>11</sup>

4 Johnson Utilities' current rates and charges are based on a 2007 test year, with several  
5 subsequent modifications. The 2014 test year ordered in Decision 73992 would put seven years  
6 between test years. If approved, the Settlement Agreement would extend the test year by a  
7 single year, putting eight years between test years. At no time in this rehearing proceeding has  
8 Staff explained how a one-year delay in the existing rate case test year filing requirement will  
9 harm the Company or its customers. Johnson Utilities, however, has articulated good and valid  
10 reasons supporting the Company's need for a delay in the rate case filing requirement of  
11 Decision 73992,<sup>12</sup> and Staff has not refuted any of those reasons.

12 Staff's witness in this rehearing proceeding readily admits that Staff does not know  
13 whether future rates will increase or decrease as a result of the Company's next rate case filing.<sup>13</sup>  
14 Staff's witness also testified at the hearing that Staff is not asserting that the current rates and  
15 charges of Johnson Utilities are not just and reasonable.<sup>14</sup> Further, Staff's witness acknowledges  
16 that "[e]ither [test year] filing requirement becomes moot if the Town of Florence purchases  
17 Johnson Utilities."<sup>15</sup> Under these circumstances, it would be foolish to throw away the \$286,000  
18 rate reduction for the Company's wastewater customers to maintain a 2014 test year for a rate  
19 case that will likely never be filed.

20 In evaluating the Settlement Agreement, the Commission should consider the following  
21 points which are undisputed in this rehearing proceeding:

- 22 • The parties agree that a \$286,000 annual reduction in wastewater rates  
23 will benefit wastewater customers of Johnson Utilities.
- 24 • The parties agree that the wastewater customers of Johnson Utilities will  
25 lose the benefit of a \$286,000 annual reduction in wastewater rates if the  
Settlement Agreement is not approved.

26 <sup>11</sup> *Id.* at 17, lines 20-22.

27 <sup>12</sup> *See* Hearing Exhibit A-2 (Hodges Surrebuttal Testimony) at 1-2.

28 <sup>13</sup> *See* Rehearing Transcript at 110, lines 6-10.

<sup>14</sup> *Id.*

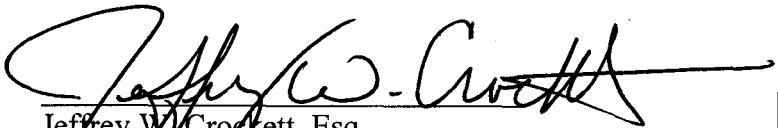
<sup>15</sup> *Id.* at 3, lines 18-19.

- The parties agree that nobody knows whether the Company's rates and charges will increase or decrease in a future rate case.
- The parties agree that RUCO and Johnson Utilities are unwilling to bifurcate the terms of the Settlement Agreement.
- The parties agree that the choice of a test year becomes moot if the Town of Florence acquires the assets and customers of Johnson Utilities.

The evidence in this case clearly shows that the public interest will be served by immediately reducing the Company's wastewater rates in the approximate amount of \$286,000 annually pursuant to the terms of the Settlement Agreement. The evidence also shows that Staff's recommendation regarding a 2014 test year was arbitrary--without any formal or informal analysis to support one year as opposed to another. Staff has provided nothing compelling to support its opposition to a one-year extension of the rate case test year. For all of the reasons set forth herein, as well as in the Company's April 18, 2014, Closing Brief in Support of Settlement Agreement, Johnson Utilities requests that the Commission approve the Settlement Agreement at the earliest possible opportunity.

RESPECTFULLY submitted this 2<sup>nd</sup> day of May, 2014.

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ORIGINAL and thirteen (13) copies of the foregoing filed this 2<sup>nd</sup> day of May, 2014, with:

Docket Control  
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1 COPY of the foregoing hand-delivered  
2 this 2<sup>nd</sup> day of May, 2014, to:

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7 Phoenix, Arizona 85007

8 Janice Alward, Chief Counsel  
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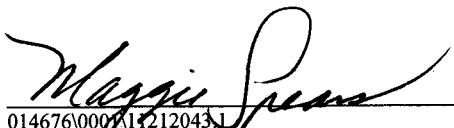
13 Steve Olea, Director  
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18 Copy of the foregoing mailed and e-mailed  
19 this 2<sup>nd</sup> day of May, 2014, to:

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